

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1361
96TH GENERAL ASSEMBLY

5285L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 392, RSMo, by adding thereto one new section relating to utilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 392, RSMo, is amended by adding thereto one new section, to be
2 known as section 392.602, to read as follows:

392.602. 1. In order to promote, encourage, and facilitate the deployment of
2 **electrical smart grid technologies, broadband communications and other similar advanced**
3 **technologies to benefit citizens in rural areas of the state of Missouri, telecommunications**
4 **service providers and rural electric cooperatives may attach, maintain, and operate their**
5 **equipment providing such services on a telecommunications transmission or rural electric**
6 **cooperative distribution system owner's poles under the terms and conditions specified in**
7 **this section. No attachments shall be made without a written agreement between the pole**
8 **owner and the attaching entity. For purposes of this section, "broadband" shall mean**
9 **those types of technologies capable of providing high speed internet access, as defined by**
10 **the Federal Communications Commission, and shall include but not be limited to digital**
11 **subscriber line, cable modem, fiber optics, fixed wireless, mobile or cellular broadband,**
12 **broadband over power lines, and WiMax technologies. Unless otherwise defined herein,**
13 **this section shall be interpreted in a manner consistent with the applicable Federal**
14 **Communications Commission's rules for pole and conduit attachments, and nothing in this**
15 **section shall be construed as conferring any jurisdiction or authority of the commission to**
16 **either regulate rates, terms, and conditions for attachments or assert any jurisdiction or**
17 **regulation over pole attachments under Section 224 of the Communications Act of 1934,**
18 **as amended.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

19 **2. Attaching entities shall inform the pole owner on whose system any equipment**
20 **is to be attached of its intent to attach and the specific location of the attachment prior to**
21 **attaching any such equipment. Unless otherwise agreed, the pole owner shall respond**
22 **within fifteen days of the attaching party's notice, except in cases where the pole owner is**
23 **engaged in large-scale, emergency repairs or disaster, as to whether the attachment may**
24 **be made without modifications to the pole, or whether additional requirements shall be met**
25 **before an attachment can be made. All attachments shall be made in accordance with**
26 **safety and reliability codes applicable to the pole owner's telecommunications transmission**
27 **or rural electric cooperative distribution system as promulgated by any governmental**
28 **agency of appropriate jurisdiction. If an attaching entity causes damages to or improperly**
29 **attaches equipment, such that it causes a safety, reliability, or pole replacement issue to the**
30 **telecommunications transmission or rural electric cooperative distribution system owner's**
31 **pole or system, the attaching entity shall, at a minimum, pay to the pole owner the**
32 **reasonable costs for any repairs or modification that are necessary to ensure the safe,**
33 **reliable, and effective operation of the telecommunications transmission or rural electric**
34 **cooperative distribution system and the attached equipment. In case of conflict, the**
35 **continued reliability and safety of the pole owner's telecommunications transmission or**
36 **rural electric cooperative distribution system shall have priority over the attachments. If**
37 **an attachment is made without proper notice to the pole owner, the parties may determine**
38 **the penalty fee that shall be paid in addition to the past-due rates for each such attachment.**
39 **If the parties cannot agree on a reasonable penalty fee, the penalty for unauthorized**
40 **attachments made after August 28, 2012, shall equal twenty-five percent of the pole rate**
41 **for a maximum period of twelve months. Notwithstanding any provision in this subsection,**
42 **any existing contract provisions for pole attachment penalties shall remain in full force and**
43 **effect until such contract expires.**

44 **3. The telecommunications transmission or rural electric cooperative distribution**
45 **system pole owner shall be entitled to a reasonable rate for permitting attachments to its**
46 **telecommunications transmission or rural electric cooperative distribution system poles.**
47 **Any rate charged by a pole owner shall be agreed to between the parties and shall be**
48 **assessed on a per-pole basis. Such rates shall not exceed the reasonable costs to the pole**
49 **owner's system based on the current costs of such equipment calculated in a manner**
50 **similar to the Federal Communications Commission rules for pole and conduit**
51 **attachments. In addition, if the pole owner can provide competent evidence of additional**
52 **cost-based inefficiencies in the maintenance of its system due solely to the presence of the**
53 **attached equipment, the pole owner may increase the rate by a corresponding reasonable**
54 **amount. Notwithstanding the forgoing, any existing contracts for pole attachments shall**

55 remain in full force and effect until such contracts expire. At the expiration of the term of
56 an existing contract, the rates in the new agreement shall not exceed a ten percent increase
57 per year over any previously established rate, provided however, that if the pole owner can
58 provide competent evidence that the previously established rate was set at fifty percent or
59 more below the pole owner's cost, the rates in the new agreement then shall not exceed a
60 twenty percent increase per year over any previously established rate. In either case, the
61 rates in the new agreement shall not exceed the pole owner's reasonable costs calculated
62 in the manner specified in this subsection.

63 4. If the parties cannot agree on a reasonable rate for pole attachments, either party
64 may demand nonbinding mediation. If mediation is unsuccessful in producing an
65 agreement, the pole owner shall set the rate under the limits set forth in subsection 3 of this
66 section. If the attaching entity believes the rate exceeds the standards provided in this
67 section, it may file a petition in the circuit court of any county in which the pole owner
68 maintains an office for the conduct of its business. The circuit court shall have the right
69 to hear evidence presented by the parties as to the use being made by the attaching entity
70 and as to the relevant costs and determine the rate to be paid for such attachments under
71 the limits set forth in subsection 3 of this section.

72 5. If the pole owner files a suit to collect any moneys for pole attachments that it
73 believes is due and owing to the pole owner based on the terms of an agreement between
74 the pole owner and the attaching entity and the court determines that an amount is due
75 and owing to the pole owner, the pole owner may recover the amount owed for the pole
76 attachments, any interest and penalties on such amount, and reasonable attorney fees as
77 determined by a court of competent jurisdiction. Prior to filing any collection action, the
78 pole owner shall provide forty-five days notice to the attaching entity that an amount is
79 owed and that the pole owner will file a collection action if payment is not made in full with
80 the notice period. Nothing in this section precludes the pole owner from pursuing any
81 available legal remedy or damages against an attaching entity that does not have a written
82 agreement for such attachments with the pole owner.

83 6. For all easements and right-of-way interests acquired prior to August 28, 2006,
84 provided the pole attachment or the replacement of existing lines or operating equipment
85 does not result in an additional unreasonable burden on or a diminution in value of the
86 property owner's property, no pole owner shall be required to secure by additional
87 consent, contract, or agreement or by condemnation the right to permit the attachment or
88 the replacement of lines or operating equipment of telecommunications service providers
89 or rural electric cooperatives upon the telecommunications transmission or rural electric
90 cooperative system owner's poles and related real property or easements from an owner

91 of property upon which a pole owner's telecommunications transmission or rural electric
92 cooperative system is located. Unless otherwise expressly prohibited in a recorded
93 easement or other legally binding document, the pole owner's authority to reasonably
94 permit such an attachment or to replace existing lines or operating equipment shall be
95 deemed to be consistent with and not beyond the scope of the principal, intended and
96 authorized use of the pole-owner's poles, related real property or easements.

97 7. Nothing in this section shall be construed to deny a property owner reasonable
98 compensation for any increased interference with or a diminution in fair market value of
99 the property owner's property directly resulting from any pole attachment or the
100 replacement of existing lines or operating equipment authorized under this section. If after
101 good faith negotiations the parties cannot agree on the amount of such reasonable
102 compensation, a property owner may file a claim for compensation for the use of lines,
103 wires, cable, poles, or other structures and for compensation related to the attachment or
104 the replacement of existing lines or operating equipment of telecommunications service
105 providers or rural electric cooperatives. In any such proceeding the amount of damages,
106 if any, shall be limited to an amount sufficient to compensate the property owner for the
107 diminution in fair market value of the property or the increased interference with the
108 owner's use of the property, if any, caused by any new or additional physical attachments
109 to or the replacement of lines or operating equipment of the telecommunications
110 transmission or rural electric cooperative system. Evidence of revenues or profits derived
111 by telecommunications service providers or rural electric cooperatives from providing the
112 services specified in subsection 1 of this section is not admissible in any proceeding by the
113 property owner to recover damages.

114 8. Nothing in this section shall be construed to deny a property owner reasonable
115 compensation for physical damages to the property owner's property directly resulting
116 from any pole attachment or the replacement of lines or operating equipment authorized
117 under this section. If after good faith negotiations the parties cannot agree on the amount
118 of such reasonable compensation, an owner of property upon which telecommunications
119 transmission or rural electric cooperative system owner's pole is located may file a petition
120 in the circuit court of the county in which the property is situated for the recovery for
121 physical property direct damages related to the attachment of the operating equipment of
122 an attaching entity and any other compensation to which such owner might be entitled.

123 9. Section 523.283 shall continue to govern and apply to all easements or
124 right-of-way interests acquired after August 28, 2006. Nothing in this section shall be
125 construed to abrogate or conflict with the provisions of chapter 523, nor to otherwise

126 confer the power of eminent domain on any entity not granted such power prior to
127 August 28, 2012.

128 **10. Notwithstanding the provisions of section 1.140 to the contrary, the provisions**
129 **of this section are nonseverable, and if any provision is for any reason held to be invalid,**
130 **such decision shall invalidate all of the remaining provisions of this section.**

✓